IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 10176 of 2005(J)

OS.218/2002 of ADDL.MUNSIFF, KASARAGOD

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PETITIONER:

JAYANTHI, DAUGHTER OF GEOJI,
KUNTAR, ADHUR VILLAGE,KASARAGOD TALUK,P.O. KUNTAR.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE

RESPONDENTS:

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1. C.A.BEEFATHUMMA,
W/O. LATE N.A.MOIDEENKUNHI, SHUKRIYA MANZIL,
NAIMARAMOOLE, MUTTATHODY VILLAGE, KASARAGOD TALUK,
P.O. VIDYANAGAR.

2. ABDUL RAZAK N.M.,
S/O. C.A.BEEFATHUMMA, SHUKRIYA MANZIL,,
NAIMARAMOOLE, MUTTATHODY VILLAGE,KASARAGOD TALUK,
P.O. VIDYANAGAR.

3. ABDULRAHIMAN N.M.,
S/O. C.A.BEEFATHUMMA, SHUKRIYA MANZIL,
NAIMARAMOOLE, MUTTATHODY VILLAGE,KASARAGOD TALUK,
P.O. VIDYANAGAR.

BY ADV. SRI.SURESH KUMAR KODOTH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.10176/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF APPLICATION I.A.563/03 IN OS.218/02 DT.20.2.03 FILED BY RESPONDENTS BEFORE MUNSIFF, KASARAGOD.

EXT.P1(a) – TRUE COPY OF AFFIDAVIT DT.20.2.03 FILED IN SUPPORT OF EXT.P1.

EXT.P2 – TRUE COPY OF COUNTER DT.3.3.03 FILED BY PETR. IN EXT.P1.

EXT.P3 – TRUE COPY OF ORDER DT.15.3.05 IN I.A.563/03 IN O.S.218/02 OF MUNSIFF'S COURT, KASARAGOD.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.10176 OF 2005

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DATED THIS THE 14TH JUNE, 2007

J U D G M E N T

Ext.P3 order by which the learned Munsiff allowed an application for amendment of plaint so as to incorporate an additional prayer for mandatory injunction, over and above the original prayer for perpetual injunction, is under challenge in this proceeding under Article 227 of the Constitution initiated by the defendant. Mr.D.Krishna Prasad, learned counsel for the petitioner submitted that the present amendment will enable the plaintiffs to get over the inevitable bar of limitation which has already set in against the relief of mandatory injunction presently allowed through the amendment.

2. Having gone through Ext.P3, I do not find anything therein which says that any contention which is available to the petitioner-defendant has been repelled/foreclosed. The Supreme Court has, in **Ragu Thilak D.John v. S.Rayappan** [(2001) 2 SCC 472], after laying down the principles to govern in the matter of applications for amendments under Order VI Rule 17, held that the question whether the relief which is newly introduced through amendment is barred by limitation is a question which should be tried as an issue in the suit. The learned Munsiff will grant at least three weeks time, after

production of copy of this judgment, to the petitioner for filing additional written statement. If a plea is raised through that additional written statement that the relief introduced through the amendment is barred by limitation, the learned Munsiff will raise an issue regarding limitation and will take a decision on that issue, keeping in mind the principles laid down by the Supreme Court in **Ragu Thilak D.John**'s case (supra) and any other binding judicial precedents which may be cited at the Bar by counsel on either sides. Subject to the above observations, the challenge against Ext.P3 is repelled.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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